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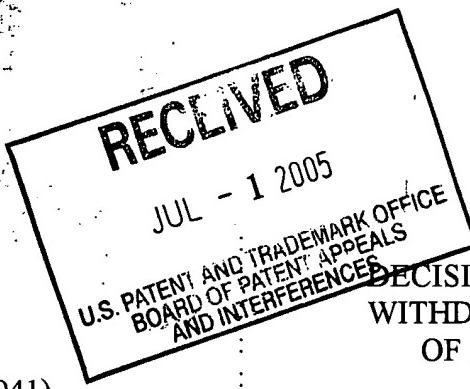
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MAY 10 2005

In re Application of:
Daniel M. Kinzer
Serial No.: 09/292,186
Filed: April 15, 1999
Attorney Docket No.: IR-1609 (2-1941)



This is a decision on the "REQUEST FOR WITHDRAWAL OF NOTICE OF ABANDONMENT" filed on January 24, 2005. It is being treated as a petition to withdraw the holding of abandonment under 37 C.F.R. § 1.181(a). There is no fee for this petition.

The petition is **GRANTED**.

On September 27, 2004, the Board of Patent Appeals and Interferences ("the Board") rendered a decision affirming the nonfinal rejection of all the claims pending in the application. On December 22, 2004, a Notice of Abandonment was mailed indicating that the application was abandoned in view of the decision by the Board rendered on September 27, 2004 and because the period for seeking court review of the decision had expired and there were no allowed claims.

Petitioner asserts that a Request for Rehearing was timely filed on November 29, 2004. To support this assertion, petitioner has submitted a copy of the Request for Rehearing and a copy of a stamped return postcard which properly identifies and acknowledges receipt of the Request for Rehearing on December 2, 2004. The copy of the Request for Rehearing includes a Certificate of Mailing dated November 29, 2004. Thus, if the Request for Rehearing had been received it would have been timely under the provisions of 37 C.F.R. §§ 1.7(a) and 1.8(a).

A review of the application file record reveals that the above-identified Request for Rehearing having been acknowledged as being received in the USPTO on December 2, 2004 is not of record in the application file and cannot be located. However, M.P.E.P. § 503 states that a postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. Accordingly, it is concluded that the Request for Rehearing was timely received but lost after receipt thereof.

For the above stated reason, the petition is granted. The Notice of Abandonment mailed December 22, 2004 is hereby VACATED and the holding of abandonment is withdrawn.

The copy of the Request for Rehearing submitted with the petition on January 24, 2005 is accepted since the Request for Rehearing originally submitted is apparently lost. The application will be forwarded to the Board for decision on the Request for Rehearing.

Any inquiries regarding this decision should be directed to Edward Westin at (571) 272-1638.

James Dwyer, Director
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